HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, May 09, 2017
85th Legislature, Number 67
The House convenes at 10 a.m.
Part One

One bill is on the Emergency Calendar and three joint resolutions are on the Constitutional Amendments Calendar for second-reading consideration today. They are analyzed in Part One of today's *Daily Floor Report* and listed on the following page.

Dwayne Bohac
Chairman
85(R) - 67

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Tuesday, May 09, 2017
85th Legislature, Number 67
Part 1

SUBJECT: Modifying requirements for foster children and DFPS personnel

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Raymond, Miller, Minjarez, Rose, Wu

1 nay — Klick

2 absent — Keough, Swanson

1 present not voting — Frank

WITNESSES: For — Will Francis, National Association of Social Workers - Texas Chapter; Katherine Barillas, One Voice Texas; Sarah Crockett, Texas CASA; Patricia Hogue, Texas Lawyers for Children; Harrison Hiner, Texas State Employees Union; (*Registered, but did not testify*: Diane Ewing, Texans Care for Children; Joshua Houston, Texas Impact; James Thurston, United Ways of Texas; Danielle King; Thomas Parkinson)

Against — Judy Powell, Parent Guidance Center; Jeremy Newman, Texas Home School Coalition; (*Registered, but did not testify*: Lee Spiller, Citizens Commission on Human Rights; Johana Scot, Parent Guidance Center; Nicole Hudgens, Texas Values; Monica Ayres)

On — Jim Black, Angel Eyes Over Texas; Tiffany Roper, Department of Family and Protective Services; Brandon Logan, Texas Public Policy Foundation; (*Registered, but did not testify*: Anna Ford, David Freeland, Lisa Kanne, Jean Shaw, Kaysie Taccetta, and Eric Tai, Department of Family and Protective Services; Clayton Travis, Texas Pediatric Society; Tyrone Obaseki)

DIGEST: CSHB 39 would make various changes to requirements for the Department of Family and Protective Services (DFPS) and the provision of services for children in foster care, including requiring a medical examination, case management system, and trauma-based care training.

Child assessment. The bill would require DFPS to assess whether a child

had an intellectual or developmental disability as soon as possible after a child was placed in DFPS conservatorship. If the assessment indicated the child could have an intellectual disability, DFPS would have to ensure a referral for a determination of intellectual disability was made as soon as possible.

Medical examination. CSHB 39 would require DFPS to ensure that every child who had been in DFPS conservatorship for more than three business days had received an initial medical examination and a mental health screening within that period, or within the first seven business days after the child was removed if he or she was located in a rural area. DFPS would collaborate with the Health and Human Services Commission (HHSC) and medical practitioners to develop guidelines for the required medical examination.

DFPS would implement provisions regarding the required medical examination by December 31, 2018.

The department would submit a report evaluating compliance with the statewide implementation of the required medical examination to the applicable House and Senate standing committees by December 31, 2019.

Caseload management system and risk assessment. The bill would require DFPS to create and maintain a caseload management system that:

- assessed the current and potential risk of harm from abuse or neglect to each child in DFPS care;
- determined the appropriate number of cases that should be assigned to a caseworker based on the risk assessment; and
- limited the number of children with a higher risk assessment that could be assigned to a caseworker.

DFPS would have to post risk assessment guidelines on its website and disclose the results of the assessment to the court and to each party to the case before a full adversary hearing was held.

The bill would require the department to implement the caseload management system as soon as possible after the effective date.

Trauma-based care training. DFPS would have to ensure every Child Protective Services (CPS) caseworker who interacted with children daily received evidence-based trauma care training.

Emergency placement. The bill would require DFPS to develop any necessary protocols and associated best practice standards for the temporary placement of a child for a maximum of 30 days in certain foster homes, foster group homes, or cottage homes to allow the child to remain in his or her community while DFPS secured a safe and suitable long-term placement for the child.

Career development and education program. CSHB 39 would require DFPS to collaborate with foster care youth and local workforce development boards, foster care transition centers, community and technical colleges, schools, and any other appropriate workforce industry to create a career development and education program for current and former foster youth. The program would:

- assist youth with obtaining a high school diploma or GED, and industry certifications necessary for high demand occupations;
- provide career guidance; and
- inform youth about available higher education tuition and fee waivers and programs to help them transition to independent living.

Foster care provider recruitment plan. Subject to the availability of funds, the bill would require DFPS to collaborate with current foster and adoptive parents to develop and implement a plan for recruiting foster care providers.

Joint memorandum of understanding. The bill would add HHSC, DFPS, the Department of State Health Services, and the Texas Education Agency to the list of state agencies required to enter into a joint memorandum of understanding (MOU) to promote a system of local-level interagency staffing groups to coordinate services for persons needing multiagency services.

CSHB 39 would require the Office of Mental Health Coordination at

HHSC to oversee the development and implementation of the joint MOU. The memorandum would have to outline the statutory responsibilities of each agency for providing multiagency services, including subcategories for different services such as:

- physical and behavioral health care;
- prevention and early intervention services focused on child abuse, neglect, delinquency, truancy, or school dropout;
- diversion from juvenile or criminal justice involvement; and
- housing.

The state agencies would update the joint MOU by December 1, 2017.

Confidentiality. The bill would add current and former DFPS employees and contractors to the list of government personnel and other individuals who could choose to restrict public access to their personal contact information.

Effective date. The bill would take effect September 1, 2017.

SUPPORTERS SAY:

CSHB 39 would address gaps in foster care services by requiring the Department of Family and Protective Services (DFPS) to conduct timely medical examinations, establish a program for foster youth and a caseload management system for department personnel, and provide effective trauma training to DFPS caseworkers.

Medical examination. Directing the department to conduct a medical examination of children in DFPS conservatorship within 72 hours after a child's removal would allow medical professionals to quickly identify hidden symptoms of physical abuse or more serious medical conditions, such as diabetes. National standards recommend conducting medical examinations of children within 72 hours of being removed from their homes.

Career and development program. The career and development program would provide tangible skills to foster youth. Equipping foster youth with necessary life skills would reduce a child's risk of homelessness and effectively prepare him or her to live independently in

the community.

Caseload management system. The caseload management system is needed to identify priority cases and reduce high caseloads for caseworkers.

Trauma training. Evidence-based trauma training for caseworkers would increase awareness of a child's trauma symptoms and could help prevent misdiagnoses and the prescription of psychotropic medications.

OPPONENTS SAY:

CSHB 39 would duplicate existing trauma training and transitional living program efforts.

Medical examination. The medical examination that would be required within 72 hours after a child was removed from the home is an unrealistic time frame and could further traumatize the child. A medical examination should be postponed until after a judge in an adversary hearing determined the child's removal by the department was justified.

Career and development program. Establishing a career and development program for foster youth would duplicate efforts that are already provided by DFPS, such as the Preparation for Adult Living program.

Caseload management system. Establishing a caseload management system could lead to micromanagement of caseworkers, which could hinder the ability of caseworkers to perform their jobs effectively.

Trauma training. CSHB 39 could place an administrative burden on the DFPS by requiring additional trauma training for its personnel. Certain trauma care training already is required by rule and in current law, such as the trauma-informed training required for caregivers and caseworkers under Family Code, sec. 264.015.

NOTES:

According to the Legislative Budget Board's fiscal note, CSHB 39 would have a negative impact of about $2.2 million in general revenue related funds in fiscal 2018-19.

SUBJECT: Prohibiting unfunded state mandates on a municipality or county

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Cook, Giddings, Craddick, Geren, Guillen, Kuempel, Meyer, Paddie, Smithee

3 nays — Farrar, Oliveira, E. Rodriguez

1 absent — K. King

WITNESSES: For — Paul Sugg, Texas Association of Counties; (*Registered, but did not testify*: Tom Tagliabue, City of Corpus Christi; Guadalupe Cuellar, City of El Paso; Claudia Russell, El Paso County; Donna Warndof, Harris County Commissioners Court; Bobby Gutierrez and Jama Pantel, Justices of the Peace and Constables Association of Texas; Henry Trochesset, T. Michael O'Connor, Donald Sowell, Patrick Toombs, Dennis D. Wilson, and AJ Louderback, Sheriffs' Association of Texas; Julia Parenteau, Texas Association of Realtors; Windy Johnson, Texas Conference of Urban Counties; Joseph Green, Travis County Commissioners Court)

Against — (*Registered, but did not testify*: Nicole Hudgens, Texas Values Action)

DIGEST: HJR 73 would amend the Texas Constitution to prevent any law enacted by the Legislature on or after January 1, 2018, from taking effect if the law required a municipality or county to establish, expand, or modify a duty or activity that required the expenditure of its own revenue. This restriction would not apply if the Legislature appropriated or otherwise provided, from a source other than the revenue of the municipality or county, for the payment or reimbursement of the costs for the biennium in complying with the requirement.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment to restrict the power of the legislature from mandating unfunded requirements on a municipality or county."

SUPPORTERS SAY:

HJR 73 would prevent the Legislature from burdening cities and counties with unfunded mandates. Cities and counties already are struggling with hundreds of millions of dollars in expenses related to state requirements such as providing lawyers for indigent defendants, housing state prisoners in county jails, and appointing lawyers in Child Protective Services cases. This proposed constitutional amendment would prevent the state from imposing additional requirements on local jurisdictions without providing an appropriation or revenue source. If the Legislature is genuinely concerned about rising local property taxes, it needs to stop enacting laws that create unreimbursed expenses for cities and counties.

The proposed constitutional amendment would not limit the ability of the Legislature to craft public policy but would ensure that any new requirements were appropriately funded. The restriction on unfunded mandates would not need to extend to school districts because the state already pays a large share of the costs for public education.

OPPONENTS SAY:

HJR 73 would limit the ability of the Legislature to enact policies that could appropriately require cities and counties to provide certain services. It is impossible to predict what issues might arise in the future that could involve these political subdivisions, and the Legislature must retain the ability to respond to those issues.

OTHER OPPONENTS SAY:

HJR 73 should apply to other political subdivisions such as school districts and utility districts that also receive unfunded mandates from the Legislature.

NOTES:

According to the Legislative Budget Board's fiscal note, HJR 73 would cost $114,369 to publish the resolution.

SUBJECT: Exempting the Texas Bullion Depository from property taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Darby, E. Johnson, Murphy, Murr, Raymond, Shine, Springer, Stephenson

0 nays

WITNESSES: For — (*Registered, but did not testify*: Adam Cahn, Cahnman's Musings)

Against — None

On — Mike Esparza, Comptroller of Public Accounts; Phillip Ashley, Comptroller of Public Accounts

BACKGROUND: HB 483 by Capriglione, enacted in 2015, created the Texas Bullion Depository, under Government Code, ch. 2116, as a division of the comptroller's office. The depository, managed by a private entity contracting with the comptroller, was established to accept deposits of precious metals from individuals and entities to be held until transferred or withdrawn, in exchange for a fee charged for the depository's services.

DIGEST: CSHJR 113 would allow the Legislature to exempt from property taxes precious metals held by the Texas Bullion Depository.

The ballot proposal would be presented to voters at an election on November 7, 2017. The proposal would read: "The constitutional amendment authorizing the legislature to exempt from ad valorem taxation precious metal held in the Texas Bullion Depository."

SUPPORTERS SAY: CSHJR 113 would allow current efforts to create the Texas Bullion Depository to succeed. Under current law, a depository could be subject to property taxation by a locality as the precious metals are considered tangible personal property under Tax Code, ch. 11. Creating a property tax exemption for the depository would make it more competitive and successful.

A state depository is an opportunity for the state to become more self-sufficient, realize economic benefits by keeping funds in the state, and provide certainty and safety for individuals and institutional investors who want to invest in precious metals. The state currently owns about $650 million in precious metals that are held in other states and pays more than $600,000 in holding fees every year. A state depository would bring those fees back to the Texas economy.

The depository could be commercially viable because Texas' name is associated with financial strength and stability. A strong credit rating and reputation means that Texas' depository could attract investors from across the nation and the world and create an impetus for the depository to be authorized by the Chicago Mercantile Exchange's COMEX market, opening up investment opportunities for depositors. This could allow Texas to make money through the fees collected from depositors and provide an alternative to the federal monetary system in case of a systematic failure.

OPPONENTS SAY:

CSHJR 113 is unnecessary because the Texas Bullion Depository is not feasible, even with a property tax exemption. Institutional investors are interested in ensuring that their investment in precious metals can be easily liquidated, and depositories need to be authorized by the Chicago Mercantile Exchange's COMEX market to be eligible to be used to settle gold futures contracts traded on the exchange. Without this authorization, which Texas' depository would be unlikely to receive, no institutional investors would choose to use the state's depository.

Moreover, there exists no need for a Texas depository. Alternatives to the federal monetary system are not necessary because it is not in danger of failing. Also, other, more cost effective options exist for both individuals and institutional investors to invest in precious metals without actually handling the precious metals themselves, including certificates, futures contracts, or options.

NOTES:

According to the Legislative Budget Board, HJR 113 would have no fiscal implication to the state other than the cost of publication, which would be $114,393.

The enabling legislation for HJR 113 is HB 3169 by Capriglione, which was approved by the House on May 4 on the Local and Consent Calendar.

SUBJECT: Constitutional amendment revising home equity loan provisions

COMMITTEE: Investments and Financial Services — favorable, without amendment

VOTE: 6 ayes — Parker, Stephenson, Burrows, Holland, E. Johnson, Longoria

0 nays

1 absent — Dean

SENATE VOTE: On final passage, April 20 — 30-0

WITNESSES: *On House companion, HJR 99:*
For — Burt Solomons, Texas Association of Realtors; (*Registered, but did not testify*: Stephen Scurlock, Independent Bankers Association of Texas; David Emerick, JPMorgan Chase; Randy Lee, Stewart Title Guaranty Company; Julia Parenteau, Texas Association of Realtors; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Jim Reaves, Texas Farm Bureau; Allen Place, Texas Land Title Association; John Fleming and Mark Raskin, Texas Mortgage Bankers Association)

Against — Robert Doggett; Robert "Chip" Lane

BACKGROUND: Home equity lending in Texas is governed by Texas Constitution, Art. 16, sec. 50(a)(6). There are numerous provisions governing home equity loans in the Constitution. Under Art. 16, sec. 50(a)(6)(B), the outstanding principal on all debt secured by a home cannot exceed 80 percent of a home's fair market value.

Fee cap. Fees to originate, evaluate, maintain, record, insure, and service home equity loans are capped at 3 percent.

Refinancing. Home equity loans can be refinanced only as another home equity loan or a reverse mortgage.

Agricultural homesteads. Home equity loans may not be secured by

homesteads designated for agricultural use, except for homesteads used for milk production.

Home equity lines of credit. A home equity line of credit is a form of open-ended account that borrowers can debit from time to time. With a home equity line of credit, borrowers can take out a loan and then draw, repay, and reborrow money. There are numerous conditions on these loans, including requiring all advances to be at least $4,000 and prohibiting the use of a credit or debit card to obtain an advance. Home equity lines of credit are held to the requirement of all home equity loans that the principal amount borrowed when added to the total outstanding principal balance on all debt secured by the home cannot exceed 80 percent of the home's fair market value. In addition, no advances may be taken on a line-of-credit loan if the outstanding principal exceeds 50 percent of the home's fair market value.

DIGEST:

SJR 60 would amend the Texas Constitution to revise the cap on fees that can be charged when making a home equity loan, allow the refinancing of home equity loans into non-home equity loans, repeal a prohibition on home equity loans for agricultural homesteads, revise a provision governing home equity lines of credit, and amend the list of approved lenders.

Fee cap. SJR 60 would lower the cap on fees that can be charged to borrowers and would revise what type of fees count toward the cap. The cap on fees would be lowered from 3 percent to 2 percent of the principal of the loan. The following would be excluded from the calculation of the fee cap:

- appraisals done by third party appraisers;
- property surveys by state registered or licensed surveyors;
- state base premiums for title insurance with endorsements; and
- a title examination report if its cost is less than the state base premiums for title insurance without endorsements.

Refinancing. SJR 60 would allow home equity loans to be refinanced as non-home equity loans and secured with a lien against a home, if certain conditions were met. The refinancing would have to:

- occur at least a year after the home equity loan was closed;
- not include additional funds other than ones to refinance another type of debt outlined in the Constitution and costs and reserves required by the lender to refinance the debt; and
- be of an amount that, when added to the total outstanding principal balances of other indebtedness secured by encumbrances against the home, was not more than 80 percent of the fair market value of the home.

In addition, the lender would be required to give the owner a written notice, reproduced in the Constitution, within three business days of a loan application being submitted and at least 12 days before the loan is closed. The written notice lists the differences between home equity and non-home equity loans.

Home equity lines of credit. SJR 60 would repeal a current restriction on home equity lines of credit which prohibits additional advances on a loan from being made if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead.

Agricultural homesteads. SJR 60 would repeal a prohibition on home equity loans for homesteads designated for agricultural use.

Approved lenders. The current list of entities that can make home equity loans would be expanded to include subsidiaries of banks, savings and loan associations, savings banks, and credit unions that meet other requirements in the Constitution. Mortgage brokers would be removed from the list and mortgage bankers and mortgage companies would be added.

Changes to notice. SJR 60 would make conforming changes to the notice that must be given to borrowers that outline the Constitution's provisions on home equity loans. The notice itself is reproduced in the Constitution.

Ballot language and effective date. The proposed constitutional amendment would be submitted to voters at an election on November 7, 2017. The ballot proposal would read: "The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower

and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."

If approved by voters, the amendment would take effect January 1, 2018. Changes would apply only to loans made on or after that date and to existing loans that are refinanced on or after that date.

SUPPORTERS SAY:

SJR 60 would adjust the state's home equity lending framework to help make loans more accessible, lower costs for borrowers, and give consumers more choice. The proposed amendment would be consistent with the goal of protecting consumers within a stable housing market that Texas set when it developed home-equity loans.

Fee cap. SJR 60 would balance consumer protection with an appropriate standard for lenders by lowering the ceiling on fees that can be charged and removing certain fees from the calculation of the cap. These changes would address problems that have surfaced, especially for loans around $100,000 and those in rural areas. It can be difficult for lenders to put together a loan under the fee cap, resulting in some being reluctant to make such loans.

The fee cap was designed as a check against lenders imposing excessive fees, and SJR 60 would continue that consumer protection. The fees that would be excluded from the cap come from third parties and do not go to lenders, including ones for appraisals, surveys, title insurance, and title examination reports. If these were excluded and the cap was lowered, consumers would continue to be protected against extreme fees from lenders, and lenders would be held to a reasonable standard that would help ensure they could offer such loans.

Refinancing. SJR 60 would increase consumer choice by allowing the refinancing of home equity loans into non-home equity loans, something currently prohibited. If consumers want to combine a home equity loan with a purchase money loan, perhaps to get a lower interest rate on the total amount borrowed and have one payment, that option should be

available. The proposed amendment would establish reasonable parameters on such refinances, including requiring at least a year to pass before a home equity loan could be refinanced as a non-home equity loan, not allowing cash advances, and keeping the standard limit used for home equity loans so that the total amount the homeowner had borrowed could not exceed 80 percent of the home's value.

SJR 60 would require that consumers receive a notice that clearly explained the difference in the two types of loans so that they could make an informed choice. The notice would ensure that borrowers were especially aware of two important differences between these loan types by including a statement that the new loan would permit lenders to foreclose without a court order and that lenders would have recourse against other assets. This full knowledge of the conditions of each type of loan would help protect borrowers from any aggressive lending practices. Refinanced loans would be under the same regulations as any non-home equity loans with which the borrower would be familiar.

Home equity lines of credit. The proposed amendment would repeal an unnecessary restriction on home equity lines of credit, which has resulted in consumers being unable to access funds for which they had been approved. In such instances, owners must repay funds in order to access the remaining line of credit. This can result in consumers taking out larger loans sooner than they would like and paying more interest.

SJR 60 would eliminate the 50 percent limit on the amount that can be outstanding before making additional withdrawals, but lines of credit would continue to be covered by provisions that limit loans to 80 percent of fair market value. This would make conditions on lines of credit consistent with regular home equity loans, while continuing the same protections with these loans.

Agricultural homesteads. SJR 60 would allow home equity loans to be made on agricultural homesteads to give these consumers the same choice as other Texans. The original home equity laws broadly prohibited such loans, but there have been no problems in the more than 20 years of home equity lending in Texas that would support continuing a prohibition on loans to one class of homesteads. In addition to shutting owners of larger

farms and ranches out from home equity loans, the current prohibition keeps smaller, hobby agricultural homesteads from having the option of taking out home equity loans. All of the current consumer protections would continue to cover these loans.

Approved lenders. SJR 60 would update the types of approved lenders that can make home equity loans by including subsidiaries of entities that already can make the loans, including banks, savings and loan associations, savings banks, and credit unions. The bill also would update language relating to those in the mortgage industry by eliminating an obsolete term and including mortgage bankers and mortgage companies. All of the lenders that would be added by SJR 60 are highly regulated and would be held to the same standards as those who make the loans now.

OPPONENTS SAY:

SJR 60 would raise costs for borrowers and would roll back important consumer protections. These protections have worked for consumers and lenders and contributed to a stable housing market that was not as seriously affected by the recent housing bubble as other states.

Fee cap. SJR 60's changes to the fee cap would raise, not lower, costs for consumers and could create incentives to lenders to make loans. While the bill would lower the overall cap, it also would exclude major charges from the cap calculation. Borrowers would continue to pay these charges for appraisals, surveys, title insurance, or title examination reports. Lenders would then have room under the cap to raise or add upfront fees. Taken together, the costs to borrowers could easily be higher than current costs under the 3 percent cap. Higher fees going to lenders could incentivize the approval of loans by originators interested in the fees. To protect against predatory lending practices, the focus for lenders should be not only on the fees but on home equity loans as a package, with fees, interest rate, and consumer protections taken into consideration.

Refinancing. Allowing home equity loans to be refinanced as non-home equity loans would be counter to the ideas and protections embedded in the Texas home equity laws. These laws deliberately encompassed the idea of "once-a-home-equity-loan, always-a-home-equity-loan" so that homeowners who borrowed against the equity in their homes would have certain protections.

Consumers would lose important protections if home equity loans were refinanced as non-home equity loans. These protections include requiring judicial foreclosure on home equity loans and making home equity loans non-recourse so that a borrower's other assets are not at risk in a default. Requiring judicial foreclosure is especially important as it ensures the involvement of a court and that homeowners are afforded certain rights in the foreclosure process. Allowing this type of refinancing also could give lenders incentives to push the refinancing of loans both to earn the fees and to bring a loan out from under the protections given to home equity borrowers.

Home equity loan borrowers interested in refinancing their loans already can do so with a new home equity loan that carries with it all the protections, and this would be a better option than the change proposed by SJR 60.

NOTES:

SJR 60 was considered in lieu of the companion resolution, HJR 99 by Parker, and adopted by the House on May 6.

According to the fiscal note, the cost to publish the resolution would be $114,369.